

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Skowron-Muco	Team: Team # 2	CCRB Case #: 201003935	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/23/2010 9:00 AM	Location of Incident: Grand Army Plaza and Eastern Parkway and the 78th Precinct	Precinct: 78	18 Mo. SOL 9/23/2011	EO SOL 9/23/2011	
Date/Time CV Reported Wed, 03/24/2010 1:49 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/24/2010 1:49 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Vitaliy Zelikov	01346	936353	077 PCT
2. POM Angel Colon	04581	903650	078 PCT
3. POM William English	02105	901512	078 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Vitaliy Zelikov	Force: Sgt. Vitaliy Zelikov pointed his gun at § 87(2)(b)	
B.SGT Vitaliy Zelikov	Discourtesy: Sgt. Vitaliy Zelikov spoke obscenely and/or rudely to § 87(2)(b)	
C.POM William English	Force: PO William English tightly handcuffed § 87(2)(b)	
D.POM Angel Colon	Discourtesy: PO Angel Colon spoke obscenely and/or rudely to § 87(2)(b)	

Case Summary

On March 24, 2010, § 87(2)(b) contacted the CCRB, via phone, and filed a complaint regarding an incident that took place on March 23, 2010 (encl. 5-5a).

On March 23, 2010 at approximately 9:00 a.m., § 87(2)(b) interacted with Sgt. Zelikov, PO English and PO Colon. The following allegations resulted:

Allegation A: *Sgt. Vitaliy Zelikov pointed his gun at* § 87(2)(b) § 87(2)(g)

Allegation B: *Sgt. Vitaliy Zelikov spoke obscenely and/or rudely to* § 87(2)(b) § 87(2)(g)

Allegation C: *PO William English tightly handcuffed* § 87(2)(b)

Allegation D: *PO Angel Colon spoke obscenely and/or rudely to* § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) -old, 6'3" tall, 240 pound, black male with brown hair and brown eyes. § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on April 8, 2010 (encl. 7-7d). On March 23, 2010 at approximately 9:00 a.m., in the vicinity of Grand Army Plaza and Eastern Parkway in Brooklyn, § 87(2)(b) was returning home from his school in Manhattan. § 87(2)(b) was the sole occupant of his vehicle. As § 87(2)(b) traveled around the rotary on Grand Army Plaza, a black Scion approached his vehicle from the left side and attempted to cut off § 87(2)(b)'s vehicle. § 87(2)(b) would not allow the Scion to get in front of him. The Scion got right behind § 87(2)(b)'s vehicle. As both vehicles approached the stop light on Grand Army Plaza and Eastern Parkway, § 87(2)(b) slowed down and the driver of the Scion sped up and got in front of § 87(2)(b)'s vehicle. The Scion hit the front right fender of § 87(2)(b)'s vehicle. § 87(2)(b) did not hear the car hit him because he had his music up but felt a nudge. There was a lot of traffic. When both vehicles stopped at the red light, § 87(2)(b) put his vehicle in park and got out. § 87(2)(b) began to walk to the front of his vehicle to look at the damage. Before reaching no further than the front bumper of his vehicle, the individual in the Scion, identified as Sgt. Vitaliy Zelikov, jumped out of his car with his gun drawn. Sgt. Zelikov had both hands on his gun and pointed it at § 87(2)(b). Sgt. Zelikov stated, "Get the fuck back in the car." § 87(2)(b) was scared and ran back to his vehicle. He did not say anything to Sgt. Zelikov.

When Sgt. Zelikov initially exited his vehicle, his vehicle struck the vehicle in front of it because Sgt. Zelikov had jumped out of his vehicle so quickly that he forgot to put his vehicle in park. Sgt. Zelikov got back in his vehicle and put it in park. § 87(2)(b) contemplated whether or not

he should drive away but he panicked and instead began to roll up the windows and lock his car door. He was unable to lock the doors because the vehicle is old and the locks don't work properly. Sgt. Zelikov exited his vehicle a second time. He had his gun in his hand but it was not pointed at § 87(2)(b) or his vehicle. Sgt. Zelikov approached § 87(2)(b)'s vehicle, pointed the gun at § 87(2)(b) and stated, "Get the fuck out of the car." Sgt. Zelikov showed his gold badge. § 87(2)(b) realized Sgt. Zelikov was a police officer. § 87(2)(b) rolled down the driver's side window and stated that he was not going to consent to Sgt. Zelikov violating his rights. The male in the truck that Sgt. Zelikov's car hit had gotten out of his vehicle and called 911.

Sgt. Zelikov's face was red and he was frustrated and angry. Sgt. Zelikov opened § 87(2)(b)'s car door and his hands shook as he pointed his gun at § 87(2)(b)'s face. The male that Sgt. Zelikov's vehicle hit told § 87(2)(b) to get out of the car and follow Sgt. Zelikov's orders because he had a gun. Sgt. Zelikov reached down into the side panel between the driver's door and the driver's seat and grabbed a knife, which was not easily visible and lying flat wedged between the door panel and the driver's seat. § 87(2)(b) never had the knife in his hand at any point during the incident. § 87(2)(b) did not know the knife was there until Sgt. Zelikov grabbed it. Sgt. Zelikov put the knife on § 87(2)(b)'s windshield for precautionary measures. Sgt. Zelikov pointed his gun back at § 87(2)(b) and instructed him to get out of the car. § 87(2)(b) exited his car because he was scared. Sgt. Zelikov instructed § 87(2)(b) to place his hands on the trunk of the car. § 87(2)(b) complied and Sgt. Zelikov put his gun away.

Sgt. Zelikov requested to see § 87(2)(b)'s identification. § 87(2)(b) handed his identification, insurance card and registration to Sgt. Zelikov, who immediately placed the items in his pocket without looking at them. After two minutes, approximately 15 uniformed police officers arrived from all directions. The officers asked § 87(2)(b) what had happened and he told them all at the same time. The officers asked § 87(2)(b) what he wanted to do and he told them that he wanted to make a police report.

Officers transported § 87(2)(b) to the 78th Precinct and took him to a back room. § 87(2)(b) discussed the incident with an officer and then was handcuffed and walked to the main desk in the lobby area of the 78th Precinct. § 87(2)(b) saw Sgt. Zelikov standing by the door. § 87(2)(b) learned from the officers that he was arrested because Sgt. Zelikov stated that he came at him with a knife. While § 87(2)(b) was handcuffed to the chain of prisoners in the lobby of the 78th Precinct and before being transported to Red Hook Court, an officer, identified as PO William English, asked § 87(2)(b) if the handcuffs were tight. When § 87(2)(b) responded that the handcuffs were tight, PO English asked to see the handcuffs and made them even tighter. Later in the incident, an officer, identified as PO Angel Colon stated to § 87(2)(b) "Don't fucking look at me." PO English and PO Colon transported § 87(2)(b) to Red Hook Court in a police van with other prisoners.

Witness: § 87(2)(b)

- § 87(2)(b) -old, Hispanic male. There is not any further pedigree information available for § 87(2)(b). § 87(2)(b) provided a brief telephone statement and refused to provide an official statement at the CCRB.

On April 14, 2010, § 87(2)(b) provided the following phone statement (encl. 8). On March 23, 2010 at approximately 9:00 a.m., in the vicinity of Grand Army Plaza and Eastern Parkway in Brooklyn, § 87(2)(b) stated that there was a lot of traffic at the light and as he looked in the

rear view mirror, he observed that a male, identified as § 87(2)(b) walked up to the vehicle behind § 87(2)(b)'s vehicle. § 87(2)(b) was not aware that the occupant of that vehicle was a police officer. § 87(2)(b) speculated that bad driving took place earlier but did not witness it.

§ 87(2)(b) did not see if § 87(2)(b) held anything in his hands because both of § 87(2)(b)'s hands were in his sweater. § 87(2)(b) said something or did something to the officer after he approached the officer's car but § 87(2)(b) could not elaborate. Then, § 87(2)(b) turned around and ran back to his car. The officer got out of his car, leaving it in drive and the car hit § 87(2)(b)'s car. § 87(2)(b) exited his car and observed the officer running after § 87(2)(b). The officer displayed his shield and gun. § 87(2)(b) got into his car and the officer had his gun drawn and repeatedly told § 87(2)(b) to "Get out of the car." The officer opened § 87(2)(b)'s door, removed a kitchen knife and threw it on the floor. The officer then got § 87(2)(b) to get out of the car. § 87(2)(b) called 911. § 87(2)(b) told arriving police what had transpired. He also went to the precinct and provided a statement.

NYPD Statement(s):

Subject Officer: VITALIY ZELIKOV

- § 87(2)(b) -old, 6' tall, 185 pound, white male with brown hair and green eyes
- Sgt. Zelikov was off duty and in plainclothes

Memo Book

Sgt. Zelikov had an entry in his memo book which read, "At 8:20 a.m., off duty incident at Grand Army Plaza to 78th Precinct."

CCRB Testimony

Sgt. Zelikov was interviewed at the CCRB on July 8, 2010. On March 23, 2010 at approximately 9:00 a.m., Sgt. Zelikov drove home from the 77th Precinct station house at the end of his tour. Sgt. Zelikov switched lanes at Grand Army Plaza in Brooklyn and the motorist behind him, § 87(2)(b) leaned on his horn and drove his vehicle very close to the back of Sgt. Zelikov's vehicle. Traffic came to a stop and § 87(2)(b) exited his vehicle and approached the driver's side door of Sgt. Zelikov's vehicle holding a large knife. § 87(2)(b) did not make any verbal threats against Sgt. Zelikov. In response to the threat posed to him by § 87(2)(b)'s knife, Sgt. Zelikov displayed his shield to § 87(2)(b) removed his firearm from the holster, pointed the firearm at § 87(2)(b) and identified himself as a police officer.

As a result, § 87(2)(b) ran back to his vehicle. Sgt. Zelikov exited his vehicle and ran after § 87(2)(b). Sgt. Zelikov had forgotten to put his vehicle in park as he exited it and as a result, his vehicle rolled into the vehicle ahead of his. Upon approaching § 87(2)(b)'s vehicle, Sgt. Zelikov identified himself as a police officer again and gave § 87(2)(b) at least two lawful orders to exit his vehicle. § 87(2)(b) was not compliant and Sgt. Zelikov opened the door, took away § 87(2)(b)'s knife and physically removed § 87(2)(b) from his vehicle. Sgt. Zelikov instructed § 87(2)(b) to stand with his hands against the trunk of his vehicle. Officers responded to the incident. Sgt. Zelikov could not identify the officers whom were from the 78th Precinct because that is not his command. Sgt. Zelikov never told § 87(2)(b) to "get the fuck back in the car," "get the fuck out of the car" or use any obscenities at all. § 87(2)(b) was transported to the 78th Precinct, where he was arrested. Sgt. Zelikov also went back to the 78th

Precinct and briefly saw § 87(2)(b) but did not interact with § 87(2)(b). Sgt. Zelikov did not know which officers interacted with § 87(2)(b) at the precinct. Sgt. Zelikov never saw any officers tighten § 87(2)(b)'s handcuffs or use profanity against § 87(2)(b).

Subject Officer: WILLIAM ENGLISH

- § 87(2)(b) -old, 5'7" tall, 180 pound, white male with brown hair and blue eyes
- Assigned to patrol sector A.B and F with PO Lawrence Shertzman in RMP # 5012

Memo Book

PO English had an entry in his memo book which read, "At 8:30 a.m., received a radio call to 'assist police officer' at Grand Army Plaza and Flatbush Avenue. At 8:30 a.m., arrived at scene. At 8:39 a.m., transported 1 male to station house. At 8:45 a.m., male out of auto. At 9:06 a.m., one arrest."

CCRB Testimony

PO English was interviewed at the CCRB on August 19, 2010. On March 23, 2010 at approximately 8:30 a.m., PO English and PO Shertzman received a radio call regarding an officer in need of assistance at Grand Army Plaza and Flatbush Avenue in Brooklyn. Other units had already arrived prior to PO English's arrival but he was not able to identify the officers. PO English could only recall that Sgt. Carolyn Battle was present at the incident location. After approximately five minutes, PO English and PO Shertzman transported § 87(2)(b) to the 78th Precinct stationhouse. PO English could not recall § 87(2)(b)'s demeanor at that time. At the precinct, § 87(2)(b) was handcuffed and placed in a prisoner holding pen. PO English could not recall who handcuffed § 87(2)(b). He became upset that he was arrested but PO English was not able to elaborate on that. PO English could not recall if any other officers were present near the prisoner holding pen. PO English never readjusted § 87(2)(b)'s handcuffs to make them tighter. PO English could not recall whether § 87(2)(b) complained of his handcuffs being too tight or any discomfort as a result of the handcuffs. PO English did not hear any officer state to § 87(2)(b) "don't fucking look at me." PO English never saw PO Angel Colon interact with § 87(2)(b) at the precinct. PO English never came into contact with § 87(2)(b)'s handcuffs. During the time that § 87(2)(b) was at the precinct, PO English only had verbal interactions with § 87(2)(b) as he requested his information and filled out paperwork.

Subject Officer: ANGEL COLON

- § 87(2)(b) -old, 5'11" tall, 200 pound, Hispanic male with black hair and black eyes
- Assigned to patrol sector DEGH with PO Derick Barszcz

Memo Book

PO Angel Colon did not have an entry in his memo book regarding this incident.

CCRB Testimony

PO Colon was interviewed at the CCRB on July 22, 2010. PO Colon did not have any independent recollection of an interaction with § 87(2)(b) on the incident date. PO Colon did not recognize § 87(2)(b) from a photo. PO Colon and PO Barszcz transported males from a

holding pen at the 78th Precinct to the 72nd Precinct. PO Colon never stated “don’t fucking look at me” to any civilian and PO Colon did not use any profanity against any civilians. PO Colon did not hear any officers use profanity against a civilian. PO Colon did not see any officer re-tighten any civilian’s handcuffs. Other than PO Barszcz and an unidentified female officer whom were near the holding pen, there were not any other officers near the holding pen.

NYPD Document(s)

911 CD and Sprint

The 911 CD revealed that § 87(2)(b) placed a 911 call and reported that he observed an off duty police officer with his gun drawn instructing a male to exit his vehicle but the male was not compliant. Ultimately, the male was arrested. § 87(2)(b) maintained that the male had walked up to the officer’s car earlier in the incident and tried to do something to the officer but § 87(2)(b) did not elaborate. The 911 call revealed that § 87(2)(b) did acknowledge that a knife was involved. § 87(2)(b) also stated that the officer struck his car (encl. 9 and 13-13d).

UF-61 Complaint Report

The complaint report revealed that Sgt. Zelikov maintained that § 87(2)(b) approached him, displayed a knife and fled back to his vehicle after Sgt. Zelikov identified himself as a police officer (encl. 14-14a).

Arrest Report

The arrest report revealed that § 87(2)(b) was charged with § 87(2)(b). The arresting officer was PO English (encl. 15-15a).

78th Precinct Prisoner Holding Pen Roster for March 23, 2010

The prisoner holding pen roster revealed that § 87(2)(b) was placed in the holding pen at 9:07 a.m. and guarded by PO English until 5:30 p.m., at which point, he was transported to the 72nd Precinct (encl. 17).

Property Voucher # § 87(2)(b)

The property voucher revealed that a knife with a black handle was recovered near the windshield wiper groove track of § 87(2)(b)’s vehicle for arrest evidence (encl. 18).

Summons/Arrest for Incident and Disposition

- § 87(2)(b), § 87(2)(c)

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of August 23, 2010 with regard to the incident (encl. 19).

Civilian(s) Criminal History

- § 87(2)(b), § 87(2)(c)

Civilian(s) CCRB History

- This is the second CCRB complaint filed by § 87(2)(b) § 87(2)(b)

Subject Officer(s) CCRB History

- Sgt. Zelikov has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. 1).
- PO Colon has been a member of the service for sixteen years and there are no substantiated CCRB allegations against him. (encl. 2).
- PO English has been a member of the service for eighteen years and there are no substantiated allegations against him. (encl. 3)

Conclusion

Identification of Subject Officer(s)

Sgt. Zelikov and § 87(2)(b) both acknowledged being involved in the incident. § 87(2)(b) identified by name PO Colon and PO English against whom he alleged use of discourtesy and handcuffs tightened, respectively.

Investigative Findings and Recommendations

Allegation A: Sgt. Vitaliy Zelikov pointed his gun at § 87(2)(b)

The issue is whether Sgt. Zelikov had just cause to draw and point his weapon at § 87(2)(b). There are no specific guidelines governing the drawing of firearms. However, OATH case *PD v. Gliner* states that “The policy of the Police Department is such that an officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another’s personal safety” and that “the Department permits an officer a broad discretion to display his weapon whenever he feels that his life or the life of another is endangered” (encl. b). Although it was disputed by § 87(2)(b), Sgt. Zelikov maintained that § 87(2)(b) walked up to his vehicle with a knife after a traffic incident. As a result, Sgt. Zelikov feared for his safety, displayed his shield and drew his firearm. § 87(2)(b) maintained that he never held a knife during the incident and alleged that Sgt. Zelikov drew his fire arm unprovoked when § 87(2)(b) exited his vehicle to check if any damage was incurred to his vehicle. § 87(2)(b) denied approaching Sgt. Zelikov’s vehicle. A witness, § 87(2)(b) maintained that § 87(2)(b) did approach Sgt. Zelikov’s vehicle and a 911 call revealed that § 87(2)(b) did acknowledge that a knife was involved. A knife was vouchered in connection with this incident. § 87(2)(b) and Sgt. Zelikov consistently recalled that Sgt. Zelikov gave several lawful orders for § 87(2)(b) to exit his vehicle and when § 87(2)(b) failed to comply, Sgt. Zelikov opened the car door, removed a knife and then removed § 87(2)(b). It is also noteworthy that in pursuit of § 87(2)(b) Sgt. Zelikov exited his vehicle with his gun drawn and failed to put his car in drive. As a result, Sgt. Zelikov’s vehicle struck § 87(2)(b) vehicle, which is documented on the 911 call § 87(2)(g).

§ 87(2)(g)
[Redacted]
[Redacted]

§ 87(2)(g)
[Redacted]
[Redacted]

Allegation B: Sgt. Vitaliy Zelikov spoke obscenely and/or rudely to § 87(2)(b)

The issue was whether Sgt. Zelikov, against whom discourtesy is alleged, engaged in misconduct if he spoke discourteously to § 87(2)(b) during the incident. In OATH case *PD v. Dukes and Conway* it is stated that, “When an officer uses profanity in trying to secure a civilian's cooperation or for other legitimate law enforcement ends, the profanity may not rise to the level of misconduct” (encl. a). § 87(2)(b) alleged that Sgt. Zelikov told him to “Get the fuck out of the car.” It was acknowledged by Sgt. Zelikov and § 87(2)(b) and admitted by § 87(2)(b) that Sgt. Zelikov gave § 87(2)(b) several lawful orders to exit his vehicle but he did not comply.

§ 87(2)(g)
[Redacted]
[Redacted]

Allegation C: PO William English tightly handcuffed § 87(2)(b)

Allegation D: PO Angel Colon spoke obscenely and/or rudely to § 87(2)(b)

PO English denied tightening § 87(2)(b)'s handcuffs or having any contact with the handcuffs at all. PO Colon denied stating, “Don’t fucking look at me” to § 87(2)(b) § 87(2)(g)

[Redacted]
[Redacted]
[Redacted]

Team: 2

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Investigator:	_____	Magdalena Skowron-Muco	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date